IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8172 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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FEDERATION OF MUKHYA SEVIKAS THROUGH CHAIRMAN & 12 - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
Ms Ritu Morarka for Petitioner(s) :
MS ARCHANA RAVAL, AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 21/04/2006

ORAL JUDGMENT

1.In the present petition, the petitioners have challenged the action of the respondents in not granting them the benefits of the resolution dated 5th

July 1991 which provided for grant of higher pay-scale upon stagnation in a particular cadre for certain number of years for want of promotional avenues. The case of the petitioners is that vide clarification dated 16th October 1993, the respondents sought to illegally introduce a requirement of passing examination before seeking higher pay-scale. In short, the case of the petitioners is to receive higher pay-scale pursuant to resolution dated 5th July 1991. Petitioner No.1 is the Federation of Mukhya Sevikas, the cadre to which rest of the petitioners belong. Petitioners Nos.2 to 13 are the individual employees who are clamouring for such benefits. Essentially, it is the case of the petitioners that they are entitled to receive the benefits of higher pay-scale by virtue of the resolution dated 5th July 1991. The Government field an affidavit in reply stating, inter alia, that the petitioners have to make out a case that they fulfill the conditions of a subsequent resolution dated 16th August 1994.

2. Learned advocate Ms.Morarka for the petitioners submitted that number of petitioners have also cleared the departmental examination meant for promotion despite which they are neither granted promotion nor

granted higher pay-scale. She, therefore, submitted that the action of the respondents is wholly illegal.

3. On the other hand, learned AGP opposed the petition and submitted that the petitioners have to first lay a foundation for being covered under the resolution dated 16th August 1994.

4. From the above recording of pleadings, it can be seen that the petitioners seek to rely on the Government resolution dated 5th July 1991 by which the Government had evolved a policy of grant of higher pay-scale upon stagnation in a cadre for certain number of years of service for want of promotional avenues. However, shortly, thereafter, the Government found that the burden on the exchequer from the implementation of such a policy is enormous and that therefore, a fresh decision was taken through a resolution dated 16th August 1994 by which the scheme for higher pay-scale was substantially modified and the resolution dated 5th July 1991 was superseded. The petitioners who were in service as on 16th August 1994 therefore were governed by the fresh resolution and they therefore, had to make out a case that they fulfill the conditions mentioned therein. Unfortunately, the petitioners labouring under a bona-fide mistaken belief that they

are governed by the resolution dated 5th July 1991 filed the present petition placing their claims under the resolution dated 5th July 1991. As it stands, the petition, therefore, cannot be entertained. However, there appears to be justification in the petitioners' feeling aggrieved. If they fulfill the required conditions under the resolution dated 16th August 1994, their case must be considered for grant of higher pay-scale from the due date.

5. Learned advocate Ms.Morarka submitted that a number of petitioners have passed the required examinations. Yet they are neither granted promotion nor granted higher pay-scale. It will be open for the petitioners to point out these facts to the authorities by making individual representations. If such representations are made within a period of two weeks from today, the same shall be decided expeditiously and in any case within a period of four months from the date of receipt of such representations. Upon disposal of the representations, if grievance of any of the petitioners survives, it will be open for them to seek legal recourse afresh in accordance with law and it will also be open to the petitioners to take all legal contentions including the contention that insistence of

passing the examination is unwanted. I have expressed no opinion on this aspect of the matter. With these directions, the petition is disposed of. Rule is made absolute to the limited extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)